(31)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक Cr. A.No. 344/04 सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

SB: HON'BLE SHRI DHIRENDRA MISHRA, J.

APPELLANT Riyazuddin alias Raju, aged about 28 years, son of Alauddin, Resident of near Kallu Garage, Maudhapara, Raipur (CG)

VERSUS

RESPONDENT State of Chhattisgarh, through P.S. Maudhapara, Raipur (CG)

22-11-2007

Shri Kishore Bhaduri, Advocate, for appellant.

Smt. Madhunisha Singh, Panel Lawyer, for the State.

2. This criminal appeal is directed against the judgment of conviction and order of sentence dated 22nd March, 2004 passed in S.T. No. 391/2003 whereby learned 9th Additional Sessions Judge (FTC), Raipur has convicted the appellant under Section 304 Part II of I.P.C. and sentenced him to undergo R.I. for 7 years, to pay a fine of Rs. 1000/-, and in default of payment of fine, to further undergo R.I. for 1 year.

3. Case of the prosecution, in brief, is that on 11-8-2003 at about 4.00 p.m. complainant Jamshed lodged a report in Police Station Maudhapara, Raipur mentioning therein that at about 3.30 to 3.45 in the afternoon, when he was going to beetle shop, he saw that one apple fell from the hand of his elder father over the hand of the accused as a result of which, the accused beat him with hand and wooden plank of the apple box. The accused was asked by him in

सरकीय क्षेत्रीय मुद्रणालय, राजनांदगांव —FS/59— 8/2007 —30,000.

(32)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक Cr. A. NO. 344/04 सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

presence of Unus the reasons for assault, he stated that he shall again beat if he lifts any fruit from his shop. When Unus picked up an apple, he stabbed Unus with knife. Unus was taken to hospital where doctor declared him dead. After registering the offence, inquest over the dead body was prepared vide document of Ex. P-5. The body was sent for post mortem where Dr. R.K. Singh of Jawaharlal Nehru Memorial Medical College, Raipur conducted post mortem and submitted post mortem report of Ex. P-18. On the memorandum of the appellant of Ex. P-8, weapon of offence - knife was taken into possession vide Ex. P-9. The knife, wearing apparels of the accused, wearing apparels of the deceased and other articles seized during investigation were sent to F.S.L. Raipur and the report of F.S.L. is Ex. P-21. All the articles sent for medical examination except plain soil contained blood.

4. After completing investigation, charge sheet was filed in the Court of Additional Chief Judicial Magistrate, Raipur and the same was received by learned Additional Sessions Judge on transfer for trail.

5. During trial, the prosecution examined 12 witnesses in all and thereafter statement of the accused was recorded in which he denied the evidence appearing in the prosecution case against him and pleaded innocence and false implication. A specific defence was taken by the appellant that Jamshed has dropped the apple of his fruit cart

सरकारीय क्षेत्रीय मुद्रणालय, राजनांदगांव —FS/59— 8/2007 —30,000.

(33)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक Cr. A. No. 344/04 सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

and thereafter he brought his brother Unus to beat him who came with knife and when he tried to defend himself, the deceased was hit by knife.

6. After hearing the learned counsel for the respective parties, learned trial Court acquitted the appellant from charges under Section 302 of I.P.C. however the appellant was convicted under Section 304 Part II of I.P.C. and sentenced as mentioned above.

7. Learned counsel for the appellant does not press this appeal on the point of conviction under Section 304 Part II of I.P.C. however he submits that the appellant has been convicted under Section 304 Part II of I.P.C. and sentenced to undergo R.I. for 7 years, and he is in jail since 12-8-2003 and as such, he has already completed more than 4 years of jail sentence and therefore, the sentence of R.I. for 7 years should be suitably reduced.

8. On the other hand, learned counsel for the State has opposed the above prayer.

9. I have heard the learned counsel for the parties. I have gone through the record of the trial Court as well as the impugned judgment.

10 After going through the statement of the complainant P.W. 6 Jamshed who has categorically deposed the circumstances on which the offence took place and the manner in which the appellant

सरकीय क्षेत्रीय मुद्रणालय, राजनांदगांव —FS/59— 8/2007 —30,000.

(34)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक Cr. A NO 344/04 सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
	assaulted deceased Unus with knife on his vital part, prayer of the counsel for the appellant for reducing the sentence is not acceptable. 11. In the result, the appeal being devoid of substance deserves to be dismissed and it is hereby dismissed. Sd/- DHIRENDRA MISHRA Judge	